

No. 05-069

IN THE SUPREME COURT OF THE STATE OF MONTANA

2006 MT 72

MONTANA TROUT UNLIMITED; MCGUIRE'S
SOUTH FORK, LLC; FREDRICK C. BUCKINGHAM;
JUANITA POLSTON; BOYD STANLEY; HUGH HASTING;
WILL KURTZ; EDWIN MORGENS; HIGH LONESOME
RANCH, LP; HENRY C. McMICKING; MIKE GEARY
d/b/a SMITH RIVER OUTFITTERS, PRO OUTFITTERS; and
MONTANA RIVER ANGLERS, LLC,

Petitioners and Appellants,

v.

MONTANA DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION; ARTHUR R. CLINCH, as its Director;
and JACK STULTS, as Administrator of its Water Resources
Division,

Respondents and Respondents,

and

RIVERSIDE RANCH, CO.; LOUISE GALT, and
WILLIAM GALT,

Intervenors.

FILED

APR 11 2006

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

APPEAL FROM: District Court of the First Judicial District,
In and for the County of Lewis and Clark, Cause No. ADV-2003-444
The Honorable Dorothy McCarter, Judge presiding.

COUNSEL OF RECORD:

For Appellants:

Peter Michael Meloy, Jennifer S. Hendricks and Robin McGuire, Meloy
Trieweiler, Helena, Montana

Ground Water and Surface Water A Single Resource
USGS Circular 1139

“Methods of accounting for water rights of streams invariably account for surface-water diversions and surface-water return flows. Increasingly, the diversions from a stream that result from ground-water withdrawals are considered in accounting for water rights as are ground-water return flows from irrigation and other applications of water to the land surface.

Accounting for these ground-water rights involves the trading of ground-water rights and surface-water rights. This has been proposed as a water-management tool where the rights to the total water resource can be shared.

It is an example of the growing realization that ground water and surface water are essentially one resource.” (Page VI)

Smith River Case:

Montana Trout Unlimited v. Montana Department of Natural Resources and Conservation Order No 05-069 Montana Supreme Court

“The legislature provided an exception to the Basin Closure Law for groundwater, provided it is not “immediately or directly connected to” the upper Missouri River’s surface flow. DNRC’s interpretation of the Basin Closure Law conflicts with the statute, and does not provide sufficient protection to reasonably effectuate its purpose. Section 2-4-305(6), MCA. DNRC’s interpretation recognizes only immediate connections to surface flow caused by induced infiltration and ignores the less immediate, but no less direct, impact of the prestream capture of tributary groundwater. The Basin Closure Law serves to protect senior water right holders and surface flows along the Smith River basin. **It makes no difference to senior appropriators whether groundwater pumping reduces surface flows because of induced infiltration or from the prestream capture of tributary groundwater. The end result is the same: less surface flow in direct contravention of the legislature’s intent.”**